

# **EXHIBIT P**

Page 1

Page 3

VOLUME: I  
PAGES: 120  
EXHIBITS: PER  
INDEX

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

LIBERTY MUTUAL INSURANCE  
COMPANY,

Plaintiff

-VS-

THE BLACK & DECKER CORPORATION,  
BLACK & DECKER, INC., BLACK &  
DECKER (U.S.) INC., EMHART  
CORPORATION, and EMHART  
INDUSTRIES, INC.,  
Defendants

CIVIL ACTION  
NO. 96-10804-DPW

DEPOSITION of CLAYTON ROOP, a witness

called on behalf of the Plaintiff, pursuant to the  
Federal Rules of Civil Procedure, by and before  
Mona M. LaRiviere, Notary Public and Registered  
Professional Reporter within and for the Commonwealth  
of Massachusetts, at the offices of Holland & Knight,  
LLP, 10 St. James Avenue, Boston, MA, on Tuesday,  
April 3, 2001, commencing at 11:05 a.m.

Hennessey Corp., d/b/a  
ROBERT H. LANGE CO.  
50 Congress Street  
Boston, MA 02109  
(617) 523-1874

Page 2

#### APPEARANCES:

HOLLAND & KNIGHT, LLP

(by Peter J. Duffy, Esq.)

10 St. James Avenue

Boston, MA

on behalf of the Plaintiff;

WILLCOX, PIROZZOLO & MCCARTHY

(by Jack R. Pirozzolo, Esq.)

50 Federal Street

Boston, MA 02110

on behalf of the Defendants.

#### INDEX

WITNESS NAME

PAGE NO.

CLAYTON ROOP

Direct by Mr. Duffy

4

#### EXHIBITS

EXHIBIT NO.

PAGE NO.

1 Affidavit of Clayton Roop dated  
February 4, 1998

26

2 Affidavit of Clayton Roop dated

January 1999

44

3 Affidavit of Alan Schlemmer

74

4 Affidavit of Richard T. Kidwell dated

January 6, 1999

80

5 Letter dated August 5, 1992 from Linda

McCroddan to Alan Schlemmer

83

6 Letter dated September 29, 1994 from Gary

Duvall to Elaine Caprio-Brady

107

Page 4

#### STIPULATIONS

It is hereby stipulated by and  
between the respective parties that the witness  
shall read and sign the deposition transcript  
within 30 days of receipt. The filing and  
notarization are waived.

It is further stipulated and agreed  
that all objections except as to the form of the  
question and motions to strike shall be reserved  
until the time of trial.

CLAYTON ROOP, having been duly  
sworn, testified upon his oath in answer to  
interrogatories as follows:

#### DIRECT EXAMINATION

BY MR. DUFFY:

Q Mr. Roop, did you prepare for the deposition  
here today by reviewing any documents?

A Yes, I did.

Q What documents did you review?

A My previous deposition, Mr. Schlemmer's  
deposition, Kidwell and Sweeney, and I met with  
Jack this morning.

Q Why did you review the depositions?

A Refresh my memory.

Page 49

1 is that this case was referred to ESIS pursuant  
 2 to the written contract that you've had since  
 3 '85-'86; is that right? There was no separate  
 4 retention in other words?  
 5 A Correct.  
 6 Q Was ESIS also the claims administrator for the  
 7 Hand-Arm Vibration claim; that is, the  
 8 Mississippi Hand-Arm Vibration claim, in the  
 9 Arkansas Hearing Loss claim as well?  
 10 A Yes. I'm not sure of the Arkansas. Depending  
 11 on what years were involved, it could have been  
 12 Aetna.  
 13 Q Just so I'm clear, Aetna has also acted as a  
 14 claims administrator for --  
 15 A For Emhart.  
 16 Q Emhart. Now, I note in the next sentence it  
 17 indicates "In its capacity as claims  
 18 administrator, ESIS received certain invoices in  
 19 connection with the defense of the Mississippi  
 20 Hearing Loss claim, primarily from Black &  
 21 Decker's local counsel." Do you see that?  
 22 A Yes.  
 23 Q Now, it indicates primarily from Black &  
 24 Decker's local counsel. Was ESIS provided any

Page 50

1 other invoices?  
 2 A There may have been some of Miles' invoices that  
 3 they were provided.  
 4 Q Do you have any record or does Black & Decker  
 5 have any record of what invoices ESIS was  
 6 provided?  
 7 A We have a record of what they paid.  
 8 Q But no record of what invoices they were  
 9 provided?  
 10 A No.  
 11 Q Other than local counsel invoices and possibly  
 12 some Miles & Stockbridge invoices as well, was  
 13 ESIS provided any other invoices that you know  
 14 of in connection with the Mississippi Hearing  
 15 Loss?  
 16 A If there were expenses other than, you know,  
 17 counsel fees, ESIS would have paid those.  
 18 Q But you have no way of knowing whether there  
 19 were any other such invoices?  
 20 A Only what was paid.  
 21 Q So, you only know the bottom-line dollar amount  
 22 of what was paid by ESIS, but you don't know  
 23 specifically the line items that were paid?  
 24 A Oh, I knew -- I could -- yeah, the data base has

Page 51

1 the line items in it.  
 2 Q Just so I'm clear, then, the ESIS record would  
 3 contain what invoices were paid out by ESIS and  
 4 to whom?  
 5 A Yes.  
 6 Q Going on in that same sentence, it indicates  
 7 that ESIS paid those invoices and sought  
 8 reimbursement of portions of those invoices from  
 9 Black & Decker's insurers; do you see that?  
 10 A Yes.  
 11 Q Why did ESIS only request or seek reimbursement  
 12 of portions of the invoices and not the whole  
 13 entirety of the invoices?  
 14 A Well, they got a portion of the invoices from  
 15 the carriers they thought were involved.  
 16 Q Why didn't they seek the entire amount from the  
 17 carriers they thought were involved? Why did  
 18 they seek only portions from the carriers  
 19 involved?  
 20 A Well, I think in total they tried to collect it  
 21 all.  
 22 Q What's the basis for your assertion that they  
 23 tried to collect it all?  
 24 A Well, there are exhibits back here, I don't know

Page 52

1 what -- what they are, B, C and D I believe,  
 2 where they sent out -- they say they sent out,  
 3 tried to collect the numbers.  
 4 Q Well, let's go on to the next paragraph --  
 5 A All right.  
 6 Q -- where it indicates that in a letter from  
 7 Linda McCrondan (sic), or McCroddan, of ESIS  
 8 dated September 4, 1992, and that's attached,  
 9 ESIS requested reimbursement from Black &  
 10 Decker's insurers for payments that ESIS had  
 11 made for defense costs in the Mississippi  
 12 Hearing Loss claims through September 4, 1992 as  
 13 follows, and then you provide the breakdown,  
 14 which indicates Liberty Mutual 37.5 percent,  
 15 Home Insurance 12.5 percent, London insurers  
 16 12.5 percent, and Twin Cities 4 percent; do you  
 17 see all that?  
 18 A Yeah.  
 19 Q Now, when I add that up, that provides a total  
 20 of I believe 65 percent --  
 21 A Uh-huh.  
 22 Q -- of the total payment that ESIS had made for  
 23 defense costs. So, that indicates that ESIS did  
 24 not request one hundred percent from the

Page 73

1 A He would have conferred probably with me.  
 2 Q I note the last sentence, even the last clause  
 3 of the first paragraph indicated "That since  
 4 signatures on the Cost-Sharing Agreement could  
 5 be obtained simply through the mail..." Do you  
 6 see that?  
 7 A Yes.  
 8 Q Do you know what the Cost-Sharing Agreement  
 9 reference there is?  
 10 A There are references in here to a Cost-Sharing  
 11 Agreement somewhere -- oh, they're in  
 12 Mr. Shemer's (sic) deposition.  
 13 MR. PIROZZOLO: Schlemmer.  
 14 A Schlemmer.  
 15 Q Is it your understanding that the same  
 16 Cost-Sharing Agreement referenced by Mr.  
 17 Schlemmer is the Cost-Sharing Agreement  
 18 referenced here by BSIS?  
 19 A It is sent to him, and I don't know that that's  
 20 exactly what Linda is referring to. It would be  
 21 speculation on my part.  
 22 Q Referring to the third paragraph --  
 23 A Yes.  
 24 Q -- indicating "The original agreement is

Page 74

1 enclosed in Alan Schlemmer's letters and I ask  
 2 that an authorized representative of his company  
 3 sign the agreement and forward it to Jeannie for  
 4 signature" do you see that?  
 5 A Yes.  
 6 Q And then later on it indicates "After all  
 7 signatures are obtained, I will distribute  
 8 copies." Do you see that?  
 9 A Yes.  
 10 Q Are you aware of any Cost-Sharing Agreement that  
 11 was being circulated amongst the parties to this  
 12 letter at or about September 4th, 1992?  
 13 MR. PIROZZOLO: Objection.  
 14 A Only the one that's in Mr. Schlemmer's  
 15 deposition.  
 16 THE WITNESS: Is that a deposition  
 17 or affidavit?  
 18 MR. PIROZZOLO: Affidavit.  
 19 A Affidavit.  
 20 Q I have a copy of Mr. Schlemmer's affidavit that  
 21 I believe you're referencing that I ask the  
 22 reporter to mark as Roop Exhibit No. 3.  
 23 (Document marked Exhibit No. 3.)  
 24 BY MR. DUFFY:

Page 75

1 Q Referring you to tab D of the Schlemmer  
 2 affidavit, Roop No. 3, is the Interim  
 3 Cost-Sharing Agreement for Mississippi Hearing  
 4 Loss litigation, at that tab D the Cost-Sharing  
 5 Agreement that you were aware of being  
 6 circulated amongst the parties to the September  
 7 4, 1992 letter?  
 8 A I believe this is the one that would have been  
 9 referred to.  
 10 Q Have you seen that Interim Cost-Sharing  
 11 Agreement attached at tab D before?  
 12 A Before what?  
 13 Q Before today.  
 14 A I probably did, yes.  
 15 Q And when would you --  
 16 A I don't --  
 17 Q -- have seen it?  
 18 A I don't -- back in '92-'93 sometime probably.  
 19 Q How did you come about seeing it back in  
 20 '92-'93, that is, the Cost-Sharing Agreement?  
 21 A Mr. Kidwell would have shown it to me.  
 22 Q And did you review it at that time?  
 23 A I don't know to what extent we reviewed it,  
 24 because it was his recommendation not to sign

Page 76

1 it.  
 2 Q When did Mr. Kidwell recommend that you not sign  
 3 the agreement?  
 4 A I don't know exactly.  
 5 Q What did Mr. Kidwell say specifically?  
 6 A I don't know that.  
 7 Q Where did Mr. Kidwell say that you should not  
 8 sign it?  
 9 A I never saw him in his office, so I'd have to  
 10 assume it was in my office.  
 11 Q So you were sitting face to face with  
 12 Mr. Kidwell when he told you not to sign this  
 13 agreement?  
 14 A Probably, yes.  
 15 Q But you can't --  
 16 A I can't say specifically.  
 17 Q Do you recall what Mr. Kidwell said regarding  
 18 the agreement?  
 19 MR. PIROZZOLO: I don't mind Mr.  
 20 Roop answering these questions, but I have to  
 21 argue privilege. It slipped out, what  
 22 Mr. Kidwell said, before I had a chance to  
 23 instruct.  
 24 MR. DUFFY: The reporter is having

Page 85

Page 87

1 particular date it was, I don't know.  
 2 Q And who else was present?  
 3 A If she walked in this room I wouldn't know her.  
 4 Q Earlier in your deposition you indicated that  
 5 you were at the original meeting where the cost  
 6 sharings were discussed; do you recall that?  
 7 A Yes.  
 8 Q When was that meeting?  
 9 A I don't recall.  
 10 Q Is that the same meeting that you believe Linda  
 11 McCroddan may have been present at?  
 12 MR. PIROZZOLO: Objection.  
 13 A Restate the question.  
 14 (THEREUPON, the requested portion  
 15 of the text was read by the Court Stenographer.)  
 16 A The meeting you're referring to there?  
 17 Q Do you believe Linda McCroddan may have been  
 18 present at the original meeting where cost  
 19 sharings --  
 20 A Yes.  
 21 Q -- were discussed?  
 22 A I believe she was.  
 23 Q Do you recall any other people who were present  
 24 or who may have been present for that meeting?

1 A Paragraph 4?  
 2 Q Yes, sir.  
 3 A Uh-huh.  
 4 Q It indicates, "I was not authorized on behalf of  
 5 Black & Decker to enter into a Cost-Sharing  
 6 Agreement of the type mentioned in the Schlemmer  
 7 affidavit." Do you see that?  
 8 A Yes.  
 9 Q Was Mr. Kidwell authorized to enter into any  
 10 type of Cost-Sharing Agreement on behalf of  
 11 Black & Decker?  
 12 A No.  
 13 Q Were you authorized to enter into a Cost-Sharing  
 14 Agreement on behalf of Black & Decker?  
 15 A At that time, no.  
 16 Q Was anyone within the company authorized to  
 17 enter into a Cost-Sharing Agreement?  
 18 A Yes.  
 19 Q Who?  
 20 A Would have been an officer, a treasurer who I  
 21 reported to.  
 22 Q And who specifically would that have been at  
 23 this time?  
 24 A A Mr. Page.

Page 86

Page 88

1 A Mr. Kidwell and myself, and I believe there was  
 2 a representative from Liberty, and from Mendes &  
 3 Mount, which would have been Ed Man -- his  
 4 name's in here somewhere.  
 5 Q And where was that meeting?  
 6 A Philadelphia.  
 7 Q What was the purpose of that meeting?  
 8 A To get the insurance companies to pay their cost  
 9 of this litigation.  
 10 Q And what did you say during that meeting?  
 11 A I don't recall.  
 12 Q What did Mr. Kidwell say during that meeting?  
 13 A I don't recall.  
 14 Q What did the person from Mendes & Mount say  
 15 during --  
 16 A I don't know.  
 17 Q What did the person from Liberty Mutual say  
 18 during the meeting?  
 19 A I don't know, don't recall.  
 20 Q Can you recall anything at all said during that  
 21 meeting in Philadelphia?  
 22 A No. Sorry.  
 23 Q I note in paragraph 4 of Mr. Kidwell's  
 24 affidavit --

1 Q Did you ever discuss the Interim Cost-Sharing  
 2 Agreement with Mr. Page?  
 3 A I don't recall.  
 4 Q What is Mr. Page's first name?  
 5 A Steven.  
 6 Q Do you know where Mr. Steven Page is today?  
 7 A Yes.  
 8 Q Where?  
 9 A He is president of Otis Elevator, which is part  
 10 of United Technologies.  
 11 Q Do you know whether Mr. Kidwell had any  
 12 conversations with Mr. Page?  
 13 A I don't recall.  
 14 Q Who executed the contract between Black & Decker  
 15 and BSIS?  
 16 A Who executed it?  
 17 Q Yes. Who signed it on behalf of Black & Decker?  
 18 A I did.  
 19 (Attorney and client conferring.)  
 20 Q I note --  
 21 A Yeah, in the first couple years -- we started  
 22 with them in '85 -- it probably was a Mr. Ortel  
 23 that signed it. O-R-T-E-L.  
 24 Q Okay.



<p style="text-align: right;">Page 89</p> <p>1 A Who would have signed it, and I would have                  2 signed it as an -- it's an annual deal, so I                  3 would have signed it after '90.                  4 Q Sir, referring you to the third sentence of this                  5 letter that you got, it indicates "You will note                  6 Black &amp; Decker has agreed..." --                  7 MR. PIROZZOLO: Which one are you                  8 referring to, Exhibit 4?                  9 THE WITNESS: Exhibit 5.                  10 Q Yes, referring you to the August 5th, 1992                  11 letter, Exhibit 5, and specifically the third                  12 sentence, "You will note Black &amp; Decker has                  13 agreed to consider itself self insured for the                  14 period of 1964 to 1970 since specific coverage                  15 information has not been located to date"; do                  16 you see that?                  17 A Yes.                  18 Q Following your receipt of this letter, did you                  19 ever indicate to anyone that Black &amp; Decker had                  20 not agreed to consider itself insured for that                  21 period?                  22 A I don't -- I don't recall whether it did or                  23 didn't.                  24 Q Did you ever take issue with this language in</p>	<p style="text-align: right;">Page 91</p> <p>1 Q Sir, referring you back to your affidavit that                  2 was marked as Exhibit No. 2, and specifically                  3 referring you to tab C, it's the letter dated                  4 June 18, 1993.                  5 A Uh-huh.                  6 Q Where did you obtain this letter from to attach                  7 it to your affidavit?                  8 A I don't know where.                  9 Q Is it safe to say that this letter came from                  10 your files?                  11 A It could have, but I was not copied on the                  12 letter.                  13 Q I note the last sentence before the chart                  14 portion on the first page of the letter                  15 indicating, "According to our Cost-Sharing                  16 Agreement, each carrier owes the following." Do                  17 you see that?                  18 A Yes.                  19 Q Do you know what the Cost-Sharing Agreement                  20 referenced there is?                  21 A I can only assume she's referring to the one                  22 that Alan had.                  23 Q And she is an agent of Black &amp; Decker; is that                  24 right?</p>
<p style="text-align: right;">Page 90</p> <p>1 this letter by ESIS on August 5th, 1992?                  2 A I don't recall.                  3 Q Do you know whether anyone --                  4 A This is not a letter by ESIS.                  5 Q Who is it a letter by then, sir?                  6 A Alan Schlemmer of Liberty.                  7 Q Isn't it a letter to Alan Schlemmer, sir, and a                  8 letter from ESIS?                  9 A Oh, yes. I'm sorry. It is, yeah. Yes.                  10 Q Did you ever inform Alan Schlemmer or anyone at                  11 Liberty that Black &amp; Decker had not agreed to                  12 consider itself self insured for the period of                  13 1964 to 1970?                  14 A Well, I'll answer by saying, it was never an                  15 issue with us that we were anything but insured                  16 by Liberty.                  17 Q For purposes of allocating percentage shares of                  18 responsibility for cost sharing in the                  19 Mississippi Hearing Loss litigation, did you                  20 ever tell anyone at Liberty Mutual that Black &amp;                  21 Decker would not agree to consider itself self                  22 insured for the period 1964 to 1970 following                  23 this August 5th, 1992 letter?                  24 A I don't recall whether we did or didn't.</p>	<p style="text-align: right;">Page 92</p> <p>1 A She had no authority to enter into an agreement                  2 with black -- for Black &amp; Decker.                  3 Q What is the basis for your assertion in that                  4 regard?                  5 A We didn't give her any authority to enter into                  6 any agreement.                  7 Q What authority did you give her?                  8 A She had specific instructions of how to handle                  9 particular claims.                  10 Q What were her specific instructions as to how to                  11 handle particular claims?                  12 A Well, they were spelled out in a -- in a Service                  13 Agreement.                  14 Q Has that Service Agreement been produced in this                  15 litigation?                  16 A I don't know.                  17 Q Is that the same contract that we discussed                  18 earlier?                  19 A Yes.                  20 Q The one that Ortel signed originally and you                  21 began to sign after a certain period, 1990 or                  22 so?                  23 A Yes.                  24 Q And renewed on an annual basis?</p>

Page 97

1 see that?

2 A Yes.

3 Q Did you have any discussions or meeting with any

4 of Black & Decker's carriers with respect to

5 cost sharing on the vibration claims?

6 A No.

7 Q Just so I'm clear, then, the Philadelphia

8 meeting we discussed earlier concerned only the

9 Mississippi Hearing Loss; is that correct?

10 A Yes.

11 Q Do you know whether ESIS ever received word from

12 Black & Decker's corporate counsel, Miles &

13 Stockbridge, on the cost sharing arrangement for

14 the vibration claims?

15 A No, I don't.

16 Q Let me ask you this, Mr. Roop, if there was no

17 Cost-Sharing Agreement between the parties, why

18 is it, then, that ESIS was not billing Black &

19 Decker's insurance carriers for one hundred

20 percent of the cost of the Mississippi Hearing

21 Loss litigation?

22 MR. PIROZZOLO: Objection.

23 A I believe that Liberty was taking the position

24 that it was only responsible for a portion of

Page 98

1 the -- of the loss on our -- and not the full

2 responsibility was theirs.

3 Q And so ESIS, is it your understanding, simply

4 went along with Liberty's position and only

5 billed it for a portion?

6 A At that time, yes.

7 Q You indicated "At that time." Has ESIS ever

8 billed Liberty for more than a portion?

9 A Not that I'm aware of.

10 Q Is it fair to say, then, that ESIS was

11 proceeding under the assumption that there was a

12 Cost-Sharing Agreement for the Mississippi

13 Hearing Loss litigation?

14 MR. PIROZZOLO: Objection.

15 Q Do you have any documents or other information

16 to suggest that ESIS was acting under anything

17 else other than the assumption that the

18 Cost-Sharing Agreement was effective?

19 MR. PIROZZOLO: Objection.

20 A They were probably operating under the

21 assumption that it would be executed, but it was

22 never executed.

23 Q And was Black & Decker also operating under the

24 understanding that the Cost-Sharing Agreement

Page 99

1 for the Mississippi Hearing Loss litigation

2 would be executed?

3 MR. PIROZZOLO: Objection.

4 A Being as nobody -- I did not have the authority

5 to sign a document like that, I can't say

6 whether we would have eventually signed it.

7 Certainly would not have signed it without the

8 years in question.

9 Q Do we have any documents or information to

10 suggest that Miles & Stockbridge was acting

11 under any understanding other than that the

12 Cost-Sharing Agreement for the Mississippi

13 Hearing Loss litigation was effective?

14 MR. PIROZZOLO: Objection.

15 A Say that again. I'm not so sure whether the

16 answer, right answer is yes or no because of the

17 way you worded the question.

18 Q Is it your understanding that Miles &

19 Stockbridge was operating under the

20 understanding that the Cost-Sharing Agreement

21 was effective?

22 MR. PIROZZOLO: Objection.

23 A They were not operating under the assumption

24 that the cost agreement was effective.

Page 100

1 Q And what is the basis for your assertion in that

2 regard? Because we've just seen documents where

3 attorneys at -- well, we have just seen a

4 document where there was reference to the

5 Cost-Sharing Agreement by Miles Stockbridge.

6 MR. PIROZZOLO: Objection.

7 Q You can answer.

8 MR. PIROZZOLO: Which document?

9 Which document? I don't know what document

10 you're referring to.

11 (Short pause.)

12 MR. PIROZZOLO: Care to rephrase

13 your question?

14 MR. DUFFY: Let's stay off for a

15 moment, Jack.

16 (THEREUPON, there was a discussion

17 off the record, after which the following

18 proceedings were had.)

19 MR. DUFFY: Back on. Jack, you're

20 right. Actually, it was ESIS.

21 BY MR. DUFFY:

22 Q Is it your understanding that ESIS was operating

23 under the understanding the Cost-Sharing

24 Agreement was effective?

Page 101

MR. PIROZZOLO: Objection.

Q Because we've seen the documents.

A I think they thought plenty of times it was not signed and executed so, therefore, it couldn't be effective.

Q Where has ESIS said that it was not signed and executed and could not, therefore, be effective?

A Okay. But could not be effective because my -- they didn't say that. They state at various times that it was not executed and signed by both parties.

Q Did they ever say this to you personally?

A I don't recall.

MR. DUFFY: Can we take a quick break now?

MR. PIROZZOLO: Sure.

(THEREUPON, there was a recess taken, after which the following proceedings were had.)

BY MR. DUFFY:

Q Referring you to paragraph 16 of your second affidavit, Mr. Roop. It's the Exhibit No. 2.

MR. PIROZZOLO: Paragraph 16? I just didn't hear.

Page 102

MR. DUFFY: Exhibit -- paragraph 16 of Exhibit 2.

MR. PIROZZOLO: Thank you.

Q It indicates that ESIS also paid invoices for defense costs that Black & Decker incurred in the Mississippi Hand-Arm Vibration claim; and then it goes on to indicate, "The business records that I have reviewed indicate that ESIS did not seek reimbursement for defense costs in the Mississippi Hand-Arm Vibration claim from any of Black & Decker's insurers." Do you see that?

A Uh-huh.

Q Do you know why it is that ESIS did not seek reimbursement defense costs from Black & Decker insurers in the Hand-Arm Vibration claims?

A Well, there was not an interim agreement for that, so I would assume that that's the reason they didn't.

Q Was there an interim agreement with respect to the Mississippi Hearing Loss claims? Because I understood your position was that there was no such agreement.

A Well, there's a draft of an agreement called

Page 103

"Interim Cost-Sharing Agreement, Mississippi Hearing," that's what Mr. Schlemmer says.

Q And you believe the existence of that document, which is Exhibit D to the Schlemmer affidavit, accounts for the reason why ESIS submitted the Mississippi Hearing Loss invoices for reimbursement but not the Mississippi Hand-Arm Vibration invoices?

A They're two different cases.

Q Did Black & Decker ever request that its insurers reimburse the cost of the Mississippi Hand-Arm Vibration claim?

A Not that I'm aware of.

Q With respect to paragraph 21 of your affidavit, Exhibit No. 2, and specifically the second sentence there, and we're moving on to the Arkansas Hearing Loss claim, you indicate, "During the course of the Arkansas Hearing Loss claim there was an arrangement to pay for defense costs among Farrel's insurers that is set forth in a March 15, 1993 letter"; do you see that?

A Yes.

Q Was there any similar arrangement in the

Page 104

Mississippi Hearing Loss claim that you were aware of?

A Restate your question again.

Q Let me put it this way, sir -- actually, let's flip to the letter, the letter referenced there. It's tab G of your Exhibit No. 2.

A Yeah.

Q It's the March 15, 1993 letter to Black & Decker from Delores Ladd; do you see that?

A Which schedule is that?

Q G.

A From Delores Ladd, yes.

Q Who is Delores Ladd?

A Delores Ladd is an employee of ESIS. I believe she's in -- was in Dallas or Houston or somewhere in Texas.

Q Now, you indicate that this is an arrangement for payment of defense costs among Farrel's insurers; is that right?

A In response --

Q In paragraph 21?

A Uh-huh.

MR. DUFFY: Did you get the Uh-huh?

THE WITNESS: I'll give you a yes